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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12
13 DONNA LOUIE, an individual, VALERIE
STRINGER, an individual, MARK STEELE,
14 an individual, and DAN ROYSE, an
individual, JULIE TEAGUE, an individual,
15 and JERAHMEEL CAPISTRANO, on behalf
of themselves, and on behalf of all persons
16 similarly situated,

17 Plaintiffs,

18 vs.

19 KAISER FOUNDATION HEALTH PLAN,
20 INC., a California Corporation, and Does 1 to
10,

21
22 Defendants.

CASE No. 08 CV 0795 IEG RBB

**FIRST AMENDED CLASS AND
COLLECTIVE ACTION COMPLAINT
FOR:**

1. FAILURE TO PAY REGULAR AND OVERTIME COMPENSATION IN VIOLATION OF 29 U.S.C. § 201, *et seq.*;
2. FAILURE TO PAY OVERTIME COMPENSATION IN VIOLATION OF CAL. LAB. CODE §§ 510, 515.5, 551, 552, 1194 AND 1198, *et seq.*
3. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE § 203;
4. FAILURE TO PROVIDE MEAL AND REST PERIODS IN VIOLATION OF CAL. LAB. CODE § 226.7 AND 512;
5. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226; and,
6. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE § 17200, *et seq.*
7. LABOR CODE PRIVATE ATTORNEY GENERAL ACT [Labor Code § 2698]

23
24
25
26
27 DEMAND FOR A JURY TRIAL

28

1 Plaintiffs Valerie Stringer, Donna Louie, Mark Steele, Dan Royse, Julie Teague, and
2 Jerahmeel Capistrano (“PLAINTIFFS”) alleges on information and belief, except for their own acts
3 and knowledge, the following:

4 **NATURE OF THE ACTION**

5 1. PLAINTIFFS bring this class action on behalf of themselves and a California
6 class consisting of all individuals who are or previously were employed by Defendant Kaiser
7 Foundation Health Plan, Inc. (“Kaiser Foundation Health Plan”) in a staff position as a Product
8 Specialist, Business Application Coordinator, and/or Site Support Specialist, and in other similarly
9 situated positions during the Collective Class Period and California Class Period as hereinafter
10 defined (the “CLASS”).

11 2. Individuals in these positions are and were employees who are entitled to be
12 classified as non-exempt, entitled to be paid for regular and overtime compensation, entitled to
13 receive meal and rest period breaks, entitled to prompt payment of amounts that the employer owes
14 an employee when the employee quits or is terminated, and entitled to other compensation and
15 working conditions that are prescribed by law.

16 3. Although Kaiser Foundation Health Plan requires their employees employed as
17 Product Specialist, Business Application Coordinator, and/or Site Support Specialist Staff
18 Members, and other similarly situated positions, to work more than eight (8) hours a day, forty (40)
19 hours a week, and hours on the seventh (7th) consecutive day of a workweek, as a matter of policy
20 and practice, Kaiser Foundation Health Plan consistently and uniformly misclassifies these
21 employees as exempt and denies them the required overtime and other compensation that the law
22 requires.

23 4. In this action, PLAINTIFFS, on behalf of themselves and the CLASS, seeks
24 to have all Product Specialist, Business Application Coordinator, and Site Support Specialist staff
25 members reclassified as non-exempt and recover all the compensation that Kaiser Foundation
26 Health Plan was required by law to provide, but failed to provide, to PLAINTIFFS and all other
27 CLASS members.

28 5. PLAINTIFFS and all Product Specialist, Business Application Coordinator, and

1 Site Support Specialist Staff Members performed the same primary duties, which consist of
2 installing, configuring, testing, troubleshooting, and providing technical support in connection with
3 computer applications, networks, and hardware. The primary objective of the PLAINTIFFS and all
4 other Product Specialist, Business Application Coordinator, and Site Support Specialist Staff
5 Members is essentially to provide technical support and maintain and test Kaiser's computer system
6 by various systematic routines to see that particular pieces of computer equipment or computer
7 applications are working properly according to the specifications designed by others. These job
8 duties, performed by every Product Specialist, Business Application Coordinator, and Site Support
9 Specialist Staff Member, are examples of work that lacks the requisite exercise of discretion and
10 independent judgment within the meaning of the administrative exemption. PLAINTIFFS, as well
11 as every other Product Specialist, Business Application Coordinator, and Site Support Staff
12 Member, performs duties that do not involve, with respect to matters of significance, the
13 comparison and the evaluation of possible courses of conduct, and acting or making a decision after
14 the various possibilities have been considered as required by 29 C.F.R. § 541.202(a).

15
16 **JURISDICTION AND VENUE**

17 6. This Court has jurisdiction over PLAINTIFFS' federal claim pursuant to
18 28 U.S.C. § 1331, federal question jurisdiction, 29 U.S.C. § 219, the Fair Labor Standards Act, and
19 28 U.S.C. § 1367, supplemental jurisdiction of state law claims.

20 7. Venue is proper in this district pursuant to 28 U.S.C. § 1391, because Kaiser
21 Foundation Health Plan, Inc. is a corporation that (i) is subject to personal jurisdiction in this
22 District, and, therefore, resides in this District and/or (ii) committed the wrongful conduct against
23 certain members of the CLASS in San Diego County, California.

24
25 **PARTIES**

26 8. Plaintiff Donna Louie was employed by Defendant Kaiser Foundation Health Plan,
27 Inc. as a Business Application Coordinator and a Site Support Specialist, successively, from on or
28 about June of 2007 to on or about February of 2008.

1 9. Plaintiff Valerie Stringer was employed by Defendant Kaiser Foundation Health
2 Plan, Inc. as a Product Specialist, a Business Application Coordinator and a Site Support Specialist,
3 successively, from on or about December of 2004 to in or about 2007.

4 10. Plaintiff Mark Steele was employed by Defendant Kaiser Foundation Health Plan
5 as a Product Specialist and as a Business Application Coordinator from on or about August of 2005
6 to on or about March 6, 2007.

7 11. Plaintiff Dan Royse was employed by Defendant Kaiser Foundation Health Plan
8 as a Product Specialist and as a Business Application Coordinator, successively, from on or about
9 April of 2005 to on or about January of 2007.

10 12. Plaintiff Julie Teague was employed by Defendant Kaiser Foundation Health Plan
11 as a Product Specialist and as a Business Application Coordinator, successively, from on or about
12 August 2005 to on or about April of 2006.

13 13. Plaintiff Jerahmeel Capistrano was employed by Defendant Kaiser Foundation
14 Health Plan as a Product Specialist and as a Business Application Coordinator, successively, from
15 on or about August of 2005 to on or about July of 2007.

16 14. Defendant Kaiser Foundation Health Plan is a California Corporation with
17 its principal place of business in the State of California. Defendant Kaiser Foundation Health Plan
18 also conducts business in eight (8) other states in the United States and in the District of Columbia
19 and is engaged in commerce within the meaning of the Fair Labor Standards Act by regularly and
20 recurrently receiving or transmitting interstate communications between these states and the District
21 of Columbia.

22 15. The Defendants, Kaiser Foundation Health Plan, named in this Complaint, and
23 Does 1 through 10, inclusive, are, and at all times mentioned herein were, the agents, servants,
24 and/or employees of each of the other Defendant and each Defendant was acting within the course
25 of scope of his, her or its authority as the agent, servant and/or employee of each of the other
26 Defendant (the "DEFENDANTS"). Consequently, all the DEFENDANTS are jointly and severally
27 liable to the PLAINTIFFS and the other members of the CLASS, for the losses sustained as a
28 proximate result of DEFENDANTS' conduct.

COLLECTIVE ACTION UNDER THE FLSA

1
2 16. PLAINTIFFS brings this lawsuit as a collective action under the Fair Labor and
3 Standards Act, 29 U.S.C. § 201, et seq. (the “FLSA”), on behalf of all persons who were, are, or will
4 be employed by Defendant Kaiser Foundation Health Plan as a Product Specialist, Business
5 Application Coordinator, and/or a Site Support Specialist Staff Member in California, and other
6 similarly situated positions, at any time within the applicable statute of limitations period (the
7 “COLLECTIVE CLASS PERIOD”), who have been misclassified as exempt from overtime and
8 have not been fully compensated for all actual time worked and wages earned and other benefits,
9 (the “COLLECTIVE CLASS”). To the extent equitable tolling operates to toll claims by the
10 COLLECTIVE CLASS against DEFENDANT, the COLLECTIVE CLASS PERIOD should be
11 adjusted accordingly. The COLLECTIVE CLASS includes all such persons, whether or not they
12 were paid by commission, by salary, or by part commission and part salary.

13 17. Questions of law and fact common to the COLLECTIVE CLASS as a
14 whole, but not limited to the following, include:

- 15 a. Whether DEFENDANT misclassified PLAINTIFFS and members of the
16 COLLECTIVE CLASS as exempt from the overtime requirements imposed by the
17 FLSA, 29 U.S.C. § 207;
- 18 b. Whether DEFENDANTS failed to adequately compensate the members
19 of the COLLECTIVE CLASS for overtime hours worked as required by the FLSA,
20 29 U.S.C. § 207;
- 21 c. Whether DEFENDANTS failed to adequately compensate the members of the
22 COLLECTIVE CLASS for time all worked for the benefit of DEFENDANTS as
23 required by the FLSA, including the time worked through their meal periods;
- 24 d. Whether DEFENDANTS have systematically misclassified the members of the
25 COLLECTIVE CLASS as exempt from receiving overtime compensation under
26 section 13 of the FLSA and the applicable provisions of the Code of Federal
27 Regulations;
- 28 e. Whether DEFENDANTS should be enjoined from continuing the unlawful practices;

1 and,

2 f. Whether DEFENDANTS are liable to the COLLECTIVE CLASS.

3 18. The first cause of action for the violations of the FLSA may be brought
4 and maintained as an “opt-in” collective action pursuant to Section 16(b) of FLSA, 29 U.S.C.
5 216(b), for all claims asserted by the representative PLAINTIFFS of the COLLECTIVE CLASS
6 because the claims of the PLAINTIFFS are similar to the claims of the members of the prospective
7 COLLECTIVE CLASS.

8 19. PLAINTIFFS are similarly situated and have substantially similar job
9 requirements and pay provisions to the CLASS, and were subject to Kaiser Foundation Health
10 Plan’s common and uniform policy and practice misclassifying their Product Specialist, Business
11 Application Coordinator, and Site Support Specialist Staff Members, of failing to pay for all actual
12 time worked and wages earned, and failing to fully pay for all overtime in violation of the FLSA and
13 the Regulations implementing the Act as enacted by the Secretary of Labor (the
14 “REGULATIONS”).

15

16 **CLASS ACTION ALLEGATIONS**

17 20. PLAINTIFFS bring this action on behalf of themselves in their
18 individual capacities and also on behalf of a California Class of all employees of DEFENDANTS
19 who worked for Kaiser Foundation Health Plan in California who held a position as a Product
20 Specialist, Business Application Coordinator, and/or Site Support Specialist Staff Member, or other
21 similarly situated position, and who were misclassified as exempt from overtime during the period
22 commencing on October 4, 2003 and ending on the class period cutoff date (the “CALIFORNIA
23 CLASS PERIOD”). This class is hereinafter referred to as the “CALIFORNIA CLASS.” The
24 CALIFORNIA CLASS includes all such persons, whether or not they were paid by commission, by
25 salary, or by part commission and part salary.

26 21. DEFENDANTS, as a matter of corporate policy, practice and procedure,
27 and in violation of the applicable California Labor Code (“Labor Code”) and Industrial Welfare
28 Commission (“IWC”) Wage Order Requirements intentionally and knowingly, on the basis of job

1 title alone and without regard to the actual overall requirements of the job, systematically
2 misclassified the PLAINTIFFS and the other members of the CALIFORNIA CLASS as exempt
3 from overtime wages and other labor laws in order to avoid the payment of overtime wages by
4 misclassifying their positions as exempt from overtime wages and other labor laws. To the extent
5 equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANTS, the
6 CALIFORNIA CLASS PERIOD should be adjusted accordingly.

7 22. DEFENDANTS violated the rights of the CALIFORNIA CLASS under
8 California Law by:

- 9 (a) Committing an act of unfair competition in violation of the California Labor
10 Code, by failing to pay PLAINTIFFS and the members of the CALIFORNIA
11 CLASS overtime pay for a work day longer than eight (8) hours, a work week
12 longer than forty (40) hours and/or for all hours worked on the seventh (7th)
13 consecutive day of a workweek, and by violating the California Labor Code
14 and regulations promulgated thereunder as hereinafter alleged.
- 15 (b) Violating Cal. Lab. Code § 510 by failing to pay PLAINTIFFS and the
16 members of the CALIFORNIA CLASS overtime pay for a work day longer
17 than eight (8) hours, a work week longer than forty (40) hours and/or for all
18 hours worked on the seventh (7th) consecutive day of a workweek, for which
19 DEFENDANTS are liable pursuant to Cal. Lab. Code § 1194.
- 20 (c) Violating Cal. Lab. Code § 515.5 by misclassifying PLAINTIFFS and the
21 members of the CALIFORNIA CLASS as exempt from receiving overtime
22 compensation.
- 23 (d) Violating Cal. Lab. Code § 203, which provides that when an employee is
24 discharged or quits from employment, the employer must pay the employee
25 all wages due without abatement, by failing to tender full payment and/or
26 restitution of wages owed or in the manner required by California law to the
27 PLAINTIFFS and the members of the CALIFORNIA CLASS who have
28 terminated their employment. Thus, DEFENDANTS are liable for such

1 wages for a period of thirty (30) days following the termination of such
2 employment.

3 (e) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and the
4 members of the CALIFORNIA CLASS with an accurate itemized statement
5 in writing showing the total hours worked by the employee.

6 (f) Violating Cal. Lab. Code §§ 1198 and 226.7 and the regulations and orders
7 implementing the Code, by failing to provide PLAINTIFFS and the members
8 of the CALIFORNIA CLASS with rest and/or meal periods and are thus
9 liable for premium pay of one hour for each workday such rest and/or meal
10 periods were denied.

11 23. This Class Action meets the statutory prerequisites for the maintenance
12 of a Class Action as set forth in Rule 23 of the Federal Rules of Civil Procedure (“F.R.C.P.”), in
13 that:

14 (a) The persons who comprise the CALIFORNIA CLASS are so numerous that
15 the joinder of all such persons is impracticable and the disposition of their
16 claims as a class will benefit the parties and the Court;

17 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that
18 are raised in this Complaint are common to the CALIFORNIA CLASS and
19 will apply uniformly to every member of the CALIFORNIA CLASS;

20 (c) The claims of the representative PLAINTIFFS are typical of the claims of
21 each member of the CALIFORNIA CLASS. PLAINTIFFS, like all other
22 members of the CALIFORNIA CLASS, were systematically misclassified as
23 exempt and sustained economic injuries arising from DEFENDANTS’
24 violations of the laws of California. PLAINTIFFS and the members of the
25 CALIFORNIA CLASS were and are similarly or identically harmed by the
26 same unlawful, deceptive, unfair and pervasive pattern of misconduct
27 engaged in by the DEFENDANTS of systematically misclassifying as exempt
28 all Product Specialist, Business Application Coordinator, and Site Support

1 Specialist Staff Members, and similarly situated employees solely on the
2 basis of their job title and without regard to DEFENDANTS' realistic
3 expectations and the actual, overall requirements of the job resulting in
4 economic injury to employees so misclassified.

5 (d) The representative PLAINTIFFS will fairly and adequately represent and
6 protect the interest of the CALIFORNIA CLASS, and have retained counsel
7 who are competent and experienced in Class Action litigation. There are no
8 material conflicts between the claims of the representative PLAINTIFFS and
9 the members of the CALIFORNIA CLASS that would make class
10 certification inappropriate. Counsel for the CALIFORNIA CLASS will
11 vigorously assert the claims of all Class Members.

12 24. In addition to meeting the statutory prerequisites to a Class Action, this action is
13 properly maintained as a Class Action pursuant to F.R.C.P. 23, in that:

14 (a) Without class certification and determination of declaratory, injunctive,
15 statutory and other legal questions within the class format, prosecution of
16 separate actions by individual members of the CALIFORNIA CLASS will
17 create the risk of:

- 18 1) Inconsistent or varying adjudications with respect to individual
19 members of the CALIFORNIA CLASS which would establish
20 incompatible standards of conduct for the parties opposing the
21 CALIFORNIA CLASS; or,
22 2) Adjudication with respect to individual members of the
23 CALIFORNIA CLASS which would as a practical matter be
24 dispositive of interests of the other members not party to the
25 adjudication or substantially impair or impede their ability to protect
26 their interests.

27 (b) The parties opposing the CALIFORNIA CLASS have acted on grounds
28 generally applicable to the CALIFORNIA CLASS, making appropriate class-

1 wide relief with respect to the CALIFORNIA CLASS as a whole in that the
2 DEFENDANTS systematically misclassified as exempt all Product Specialist,
3 Business Application Coordinator, and Site Support Specialist Staff Members
4 and similarly situated employees solely on the basis of their job title and
5 without regard to DEFENDANTS' realistic expectations and actual overall
6 requirements of the job;

7 (c) Common questions of law and fact exist as to the members of the
8 CALIFORNIA CLASS and predominate over any question affecting only
9 individual members, and a Class Action is superior to other available
10 methods for the fair and efficient adjudication of the controversy, including
11 consideration of:

- 12 1) The interests of the members of the CALIFORNIA CLASS in
13 individually controlling the prosecution or defense of separate actions;
- 14 2) The extent and nature of any litigation concerning the controversy
15 already commenced by or against members of the CALIFORNIA
16 CLASS;
- 17 3) The desirability or undesirability of concentrating the litigation of the
18 claims in the particular forum;
- 19 4) The difficulties likely to be encountered in the management of a Class
20 Action; and,
- 21 5) The basis of DEFENDANTS misclassifying PLAINTIFFS and the
22 CALIFORNIA CLASS as exempt by job title.

23 25. This Court should permit this action to be maintained as a Class Action
24 pursuant to F.R.C.P. 23 because:

- 25 (a) The questions of law and fact common to the CALIFORNIA CLASS
26 predominate over any question affecting only individual members;
- 27 (b) A Class Action is superior to any other available method for the fair and
28 efficient adjudication of the claims of the members of the CALIFORNIA

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CLASS;

- (c) The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- (d) PLAINTIFFS, and the other CALIFORNIA CLASS members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the common law and statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANTS' actions have inflicted upon the CALIFORNIA CLASS;
- (f) There is a community of interest in ensuring that the combined assets and available insurance of DEFENDANTS are sufficient to adequately compensate themembers of the CALIFORNIA CLASS for the injuries sustained;
- (g) DEFENDANTS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole; and
- (h) The members of the CALIFORNIA CLASS are readily ascertainable from the business records of the DEFENDANTS. The CALIFORNIA CLASS consists of all of DEFENDANTS' employees employed as Product Specialist, Business Application Coordinator, and Site Support Specialist Staff Members, and other similarly situated persons in California whose job classifications by DEFENDANTS as exempt were made solely on the basis of their job title and without regard to DEFENDANTS' realistic expectations and actual overall requirements of the job. DEFENDANTS, as a matter of law, has the burden of proving the basis for the exemption as to each and every Product Specialist, Business Application Coordinator, and Site Support

1 Specialist Staff Member. To the extent that DEFENDANTS have failed to
2 maintain records sufficient to establish the basis for the exemption (including
3 but not limited to, the employee’s job duties, wages, and hours worked) for
4 any Product Specialist, Business Application Coordinator, and/or Site
5 Support Specialist, DEFENDANTS are estopped, as a matter of law, to
6 assert the existence of the exemption.

7
8

GENERAL ALLEGATIONS

9 26. Kaiser Foundation Health Plan, as a matter of corporate policy, practice and
10 procedure, and in violation of the applicable California Labor Code (“Labor Code”), Industrial
11 Welfare Commission (“IWC”) Wage Order Requirements, and the applicable provisions of the
12 FLSA, intentionally, knowingly, and wilfully, on the basis of job title alone and without regard to
13 the actual overall requirements of the job, systematically misclassified the PLAINTIFFS and the
14 other members of the CALIFORNIA CLASS and the COLLECTIVE CLASS (the “CLASS”) as
15 exempt from overtime wages and other labor laws in order to avoid the payment of overtime wages
16 by misclassifying their Product Specialist, Business Application Coordinator, and Site Support
17 Specialist Staff Members, and other similarly situated employees as exempt from overtime wages
18 and other labor laws. To the extent equitable tolling operates to toll claims by the CLASS against
19 DEFENDANTS, the CALIFORNIA CLASS PERIOD and the COLLECTIVE CLASS PERIOD (the
20 “CLASS PERIODS”) should be adjusted accordingly.

21 27. DEFENDANTS have intentionally and deliberately created numerous job levels and
22 a multitude of job titles to create the superficial appearance of hundreds of unique jobs, when in
23 fact, these jobs are substantially similar and can be easily grouped together for the purpose of
24 determining whether they are exempt from overtime wages. For example, although PLAINTIFFS
25 were initially hired as “Product Specialists,” Kaiser Foundation Health Plan later changed these job
26 titles to “Business Application Coordinators” approximately two (2) months after hiring. Despite
27 the new titles, the PLAINTIFFS continued to perform only the same job functions as “Business
28 Application Coordinators” that they performed as “Product Specialists.” Indeed, one of

1 DEFENDANTS’ purposes in creating and maintaining this multi-level job classification scheme is
2 to create a roadblock to discovery and class certification for all employees similarly misclassified as
3 exempt. DEFENDANTS have uniformly misclassified these CLASS members as exempt and
4 denied them overtime wages and other benefits to which non-exempt employees are entitled in order
5 to unfairly cheat the competition and unlawfully profit.

6 28. DEFENDANTS maintain records from which the Court can ascertain and identify
7 by job title each of DEFENDANTS’ employees who as CLASS members, have been systematically,
8 intentionally and uniformly misclassified as exempt as a matter of DEFENDANTS’ corporate
9 policy, practices and procedures. PLAINTIFFS will seek leave to amend the complaint to include
10 these additional job titles when they have been identified.

11
12 **THE CONDUCT**

13 29. Kaiser Foundation Health Plan, Inc. is a California Corporation which operates in
14 nine states and in the District of Columbia. Kaiser Foundation Health Plan, Inc. is one of the
15 largest not-for-profit managed health care companies in the United States, offering hospital and
16 physician care through a network of hospitals and physician practices operating under the Kaiser
17 Permanente name.

18 30. PLAINTIFFS were hired by Defendant Kaiser Foundation Health Plan, Inc. as
19 an exempt, temporary employees and placed into staff positions with the job titles of Product
20 Specialist, Business Application Coordinator, and/or Site Support Specialist. The job titles were
21 described to the PLAINTIFFS as exempt and full time positions. The PLAINTIFFS functioned as
22 working members on the production side of DEFENDANTS’ Information Technology (“IT”) Staff.
23 The primary job duties of PLAINTIFFS and the Product Specialist, Business Application
24 Coordinator, and Site Support Specialist team members was to provide technical support, install and
25 upgrade hardware and software, configure desktop computers, and test and troubleshoot equipment.

26 31. The job duties performed by PLAINTIFFS as Products Specialists and/or Business
27 Application Coordinators were to provide technical support to hospital staff in connection with the
28 Kaiser Permanente HealthConnect computer system (“HealthConnect”), which was installed as part

1 of a procedure called “GoLive.” This project was instituted in order to ensure that all Kaiser
2 Permanente facilities use a common software system. Intermittently, DEFENDANTS would deploy
3 PLAINTIFFS and other similarly situated employees in teams to Kaiser Permanente facilities in
4 Northern California for month-long durations, where they, along with their team, provided training,
5 technical support and assistance to hospital clinicians and staff in conjunction with the installation
6 of the HealthConnect computer system during the “GoLive” procedure (the “DEPLOYMENT”).
7 Kaiser Permanente also employs this same GoLive procedure in various San Diego County
8 facilities. The work schedule during the DEPLOYMENTS lasted approximately four weeks where
9 the PLAINTIFFS worked more than eight (8) hours a day and more than forty (40) hours each week.
10 As a result of this rigorous work schedule, PLAINTIFFS and other similarly situated employees
11 were often unable to take meal or rest breaks. Furthermore, PLAINTIFFS and the other team
12 members were also required to deliver training sessions during their lunch periods called “Lunch &
13 Learns.” The “Lunch & Learns” were deliberately scheduled during the meal periods so that the
14 hospital clinicians and staff members could eat their lunch and learn about the HealthConnect
15 system from the PLAINTIFFS, who were forced to deliver these training sessions during *their* meal
16 periods. Prior to the GoLive, DEFENDANTS would also require PLAINTIFFS and their team
17 members to participate in “Technical Dress Rehearsals.” During these sessions, PLAINTIFFS and
18 their team members were required to test the software to ensure that the HealthConnect system was
19 functioning properly. Any problems or defects would have to be reported back to the
20 DEFENDANTS’ employees who had the technical expertise to diagnose and cure the defects. In
21 order to test the equipment without disturbing the hospital staff, these Rehearsals took place either
22 during meal periods, early in the morning, or late in the evening when the staff was not working in
23 the department. This scheduling caused the workday, wherein PLAINTIFFS participated in the
24 “Technical Dress Rehearsals,” to exceed eight (8) hours. Overall, the first two weeks of the
25 DEPLOYMENT were consistently the most grueling. The five (5) to six (6) day workweek
26 consisted of workdays which lasted as long as thirteen (13) hours. Both the third and fourth weeks
27 of the DEPLOYMENT contained five (5) to six (6) workdays, during which PLAINTIFFS and their
28 fellow team members worked approximately ten (10) hours each day. Physical demands of this

1 position include and/or included standing, sitting, walking, and bending as needed to demonstrate
2 how to use the HealthConnect computer systems to hospital staff. During the Class Period,
3 PLAINTIFFS and the members of their team worked and/or still work on the production side during
4 the various DEPLOYMENTS, but are nevertheless classified by DEFENDANT as exempt from
5 overtime pay and worked more than eight (8) hours a day and more than forty (40) hours a week.
6 The job duties and responsibilities described above that relate to providing technical support
7 comprised at least seventy percent (70 %) of the PLAINTIFFS' overall job duties and
8 responsibilities.

9 32. The PLAINTIFFS employed as Site Support Specialist Staff
10 Members were required to remain on-call pursuant to the DEFENDANTS' "on-call" rotation plan
11 (the "ROTATIONS"). According to the ROTATIONS, each staff member employed as a Site
12 Support Specialists, including Plaintiffs Louie and Stringer, took turns performing on-call duties.
13 The performance of each ROTATION lasted for an entire seven (7) day workweek, and was
14 required to be undertaken by each Site Support Specialist staff member at least once every two (2)
15 months. During this time, after returning home from at least an eight (8) hour work day, the Site
16 Support Specialist staff members were required to remain on stand-by for the entire night, every
17 night of the week, for the entire week without additional compensation. After working an entire
18 workday on the Friday of the ROTATION, the Site Support Specialist staff members were required
19 to remain on call twenty-four (24) hours a day from Friday evening until Monday morning, when
20 they would report to the employer's work site for their "regular" workday. The effect of
21 DEFENDANTS' on-call rotational system is that, during the team members rotation, the employee
22 is subject to receiving a call and is effectively precluded from engaging in any activity outside of
23 work that would hinder his ability to immediately respond to the technical support call. This system
24 places severe limitations on the activities of the Site Support Specialist staff members were and the
25 members of this team and accordingly, their time is predominantly spent for the benefit of the
26 DEFENDANTS. Each night of every ROTATION, the Site Support Specialist staff members'
27 movements were severely geographically restricted by DEFENDANTS' requirement that they
28 respond to any work request receive via pager within thirty (30) minutes by phone to the person

1 requesting technical support and then begin working on the technical support request at that time.
2 Although most of the work requests could be attended to by using their laptops, DEFENDANTS
3 required the Site Support Specialist staff members to remain within thirty (30) minutes of the
4 DEFENDANTS' premises in case on-site technical support was needed. Each night, while on-call,
5 Plaintiffs Louie and Stringer and the Site Support Specialist staff members of the CLASS all were
6 subjected to calls in conjunction with the unduly restrictive fixed, response time-limit that
7 necessitated an answer to each call. As a result of the burden imposed by these duties, Plaintiffs
8 Louie and Stringer and the Site Support Specialist staff members of the CLASS could not easily
9 trade their on-call responsibilities with another employee, as no one wanted this burden. Further,
10 Plaintiffs Louie and Stringer and the Site Support Specialist staff members of the CLASS were
11 extremely restricted while on-call in the kind and extent of personal activities in which they could
12 engage. Any personal activities which required longer than thirty (30) minutes to perform without
13 interruption, and/or required more than thirty (30) minutes to travel to and from, including, but not
14 limited to, going to see a movie in a theater, dining at a restaurant, engaging in organized sporting
15 activities, participating in weddings, supplementing one's income with a second job, and/or
16 attending to medical issues with the assistance of a doctor, dentist, or other professional, had to be
17 avoided entirely while on-call. Another inconvenience imposed upon PLAINTIFF Plaintiffs Louie
18 and Stringer and the Site Support Specialist staff members of the CLASS was the inability to
19 provide oneself with an entire night of uninterrupted sleep, as the technical support calls often came
20 in past eleven o'clock at night (11:00 p.m.) From the DEFENDANTS' facility. Despite these
21 demanding conditions imposed by DEFENDANTS, regular and overtime compensation for (a) the
22 hours worked during the ROTATIONS and (b) the "on-call" hours which restricted PLAINTIFF
23 Plaintiffs Louie and Stringer and the Site Support Specialist staff members of the CLASS during the
24 ROTATIONS as to be effectively engaged to wait, were withheld by DEFENDANTS from
25 Plaintiffs Louie and Stringer and the Site Support Specialist staff members of the CLASS.

26 33. In addition to the ROTATIONS, the Product Specialist, Business Application
27 Coordinator, and Site Support Specialists also worked "evening," "night," and "special shifts."
28 Even though these shifts were worked in addition to the regular working day of the members of the

1 CLASS, these Product Specialist, Business Application Coordinator, and Site Support Specialist
2 Staff Members did not receive any additional compensation for this work performed between 10:00
3 p.m. and 6:00 a.m. and also on weekends and holidays.

4 34. Neither PLAINTIFFS, nor any member of the CLASS, were primarily engaged
5 in work of a type that was or now is directly related to management policies or general business
6 operations, when giving these words a fair but narrow construction. Neither PLAINTIFFS, nor any
7 member of the CLASS were primarily engaged in work of a type that was or now is performed at
8 the level of the policy or management of the DEFENDANTS. To the contrary, the work of a
9 Product Specialist, Business Application Coordinator, and/or Site Support Specialist Staff Member
10 was work wherein PLAINTIFFS and the members of the CLASS were primarily engaged in the day
11 to day business operations of the DEFENDANTS, to support the computers that perform the day to
12 day work in accordance with the management policies and general business operations established
13 by DEFENDANTS' management.

14 35. Considerations such as (a) DEFENDANTS' realistic expectations for Defendants'
15 staff members holding the job titled Product Specialist, Business Application Coordinator, Site
16 Support Specialist, and other similarly situated jobs, on the production side of the DEFENDANTS'
17 business enterprise, and (b) the actual overall requirements for Defendants' staff members holding
18 the job titled Product Specialist, Business Application Coordinator, and Site Support Specialist, are
19 susceptible to common proof. The fact that their work and those of other similarly situated
20 employees involved a computer and/or a specialized skill set in a defined technical area does not
21 mean that the PLAINTIFFS and other members of the CLASS are exempt from overtime wages.
22 Indeed, the exercise of discretion and independent judgment must be more than the use of a highly
23 technical skill set described in a manual or other sources. The work that PLAINTIFFS and other
24 members of the CLASS were and are primarily engaged in performing day to day activities is the
25 work that is required to be performed as part of the day to day business of DEFENDANTS. As a
26 result, PLAINTIFFS and the other members of the CLASS were primarily engaged in work that falls
27 squarely on the production side of the administrative/production worker dichotomy.

28 36. Such work does not involve formulating management policies or operating practices,

1 committing the employer in matters that have significant financial impact, negotiating and binding
2 the company on significant matters, planning business objectives, or other indicators of exercising
3 discretion and independent judgment with respect to matters of significance discussed in 29 C.F.R.
4 § 541.202(b).

5 37. The work of PLAINTIFFS and the other members of the CLASS did not require
6 independent judgment or discretion. On the contrary, the PLAINTIFFS and the other members of
7 the CLASS performed their work pursuant to regimented and standardized protocol. Their work
8 was subject at all times to intense scrutiny and oversight by the management personnel who oversaw
9 the work of the Product Specialist, Business Application Coordinator, and Site Support Specialist
10 Staff Members.

11 38. The ability to provide the kind of technical support provided by
12 PLAINTIFFS and the other members of the CLASS did not necessitate a college level degree or any
13 formalized higher education training. Rather, the technical support is accomplished by the Product
14 Specialist, Business Application Coordinator, and Site Support Specialist by reference to written
15 manuals, assistance from other Product Specialist, Business Application Coordinator, and Site
16 Support Specialist Staff Members, and/or pursuant to other pre-established guidelines and
17 procedures.

18 39. DEFENDANTS systematically misclassified as exempt PLAINTIFFS and
19 all other members of the CALIFORNIA CLASS and COLLECTIVE CLASS solely on the basis of
20 their job title and without regard to DEFENDANTS' realistic expectations and actual overall
21 requirements of the job. Consequently, PLAINTIFFS and the other members of the CALIFORNIA
22 CLASS and COLLECTIVE CLASS uniformly and systematically exempted from payment for
23 overtime wages for hours worked in excess of eight (8) hours per day, (40) forty hours per week,
24 and/or hours worked on the seventh (7th) consecutive day of a workweek during the CLASS
25 PERIOD.

26 40. Cal. Lab. Code § 515 appoints the Industrial Welfare Commission to
27 establish exemptions from the requirement that an overtime rate of compensation be paid pursuant
28 to Sections 510 and 511 for executive, administrative, and professional employees, provided that the

1 employee is primarily engaged in the duties that meet the test of the exemption, customarily and
2 regularly exercises discretion and independent judgment in performing those duties, and earns a
3 monthly salary equivalent to no less than two times the state minimum wage for full-time
4 employment. California Labor Code Section 515.5 and Industrial Welfare Commission Wage Order
5 4-2001, set forth the requirements which must be satisfied in order for a computer employee to be
6 lawfully classified as exempt. Although wrongfully classified by DEFENDANTS as exempt at the
7 time of hire and thereafter, PLAINTIFFS, and all other members of the similarly-situated
8 CALIFORNIA CLASS, are not exempt under Industrial Welfare Commission Wage Order 4-2001,
9 and Cal. Lab. Code § 515.5.

10 41. Section 13 of the FLSA and 29 Code of Federal Regulations Part 541, et
11 seq., set forth the requirements which must be satisfied in order for an employee to be lawfully
12 classified as exempt from receiving overtime compensation. Although wrongfully classified by
13 DEFENDANTS as exempt at the time of hire and thereafter, PLAINTIFFS, and all other members
14 of the similarly-situated COLLECTIVE CLASS, are not exempt under section 13 of the FLSA or
15 the provisions of 29 C.F.R. 541, et seq.

16 42. 29 C.F.R. § 785.22 provides: Where an employee is required to be on duty for 24
17 hours or more, the employer and the employee may agree to exclude bona fide meal periods and a
18 bona fide regularly scheduled sleeping period of not more than 8 hours from hours worked,
19 provided adequate sleeping facilities are furnished by the employer and the employee can usually
20 enjoy an uninterrupted night's sleep. If the sleeping period is of more than 8 hours, only 8 hours will
21 be credited. Where no expressed or implied agreement to the contrary is present, the 8 hours of
22 sleeping time and lunch periods constitute hours worked.

23 43. Accordingly, PLAINTIFFS and every member of the CLASS are entitled to be
24 compensated for all time worked in excess of eight (8) hours per day, (40) forty hours per week,
25 and/or hours worked on the seventh (7th) consecutive day of a workweek, including time worked
26 while on-call where these employees were engaged to wait.

27 44. In addition, under Cal. Lab. Code §§ 226.7 and 512, PLAINTIFFS and
28 other members of the CALIFORNIA CLASS, were required to be provided with rest period breaks

1 each workday. DEFENDANTS failed to provide PLAINTIFFS and all other members of the
2 CALIFORNIA CLASS with the statutorily required rest period breaks during the CALIFORNIA
3 CLASS PERIOD, which has caused additional economic injuries to PLAINTIFFS and other
4 members of the CALIFORNIA CLASS.

5 45. Further, under Cal. Lab. Code §§ 226.7 and 512, PLAINTIFFS and other
6 members of the CALIFORNIA CLASS, were required to be provided with meal breaks each
7 workday. DEFENDANTS failed to provide PLAINTIFFS and all other members of the
8 CALIFORNIA CLASS with the statutorily required uninterrupted meal breaks during the
9 CALIFORNIA CLASS PERIOD, thereby causing additional economic injuries to PLAINTIFFS and
10 other members of the CALIFORNIA CLASS.

11 46. Under 29 U.S.C. § 207, PLAINTIFFS and other members of the COLLECTIVE
12 CLASS, were required to be compensated for all meal breaks taken by PLAINTIFFS and the other
13 members of the COLLECTIVE CLASS where they performed duties predominantly for the benefit
14 of the DEFENDANTS during the meal breaks. Under 29 CFR 785.19, this time spent during the
15 lunch break is compensable because PLAINTIFFS and the other members of the COLLECTIVE
16 CLASS were required to perform duties while eating.

17
18 **FIRST CAUSE OF ACTION**

19 **Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq. ("FLSA")**

20 **(By PLAINTIFFS and the COLLECTIVE CLASS and Against all DEFENDANTS)**

21 47. PLAINTIFFS, and the other members of the COLLECTIVE CLASS,
22 reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 46
23 of this Complaint.

24 48. DEFENDANTS are engaged in communication, business, and transmission between
25 California, nine other states in the United States, and the District of Columbia, and is, therefore,
26 engaged in commerce within the meaning of 29 U.S.C. § 203(b).

27 49. 29 U.S.C. § 255 provides that a three-year statute of limitations applies
28 to willful violations of the FLSA.

1 50. 29 U.S.C. § 207(a)(1) provides in pertinent part:

2 Except as otherwise provided in this section, no employer shall employ any of his
3 employees who in any workweek is engaged in commerce or in the production of
4 goods for commerce, or is employed in an enterprise engaged in commerce or in the
5 production of goods for commerce, for a workweek longer than forty hours unless
6 such employee receives compensation for his employment in excess of the hours
7 above specified at a rate not less than one and one-half times the regular rate at which
8 he is employed.

9 51. Section 213(a)(1) of the FLSA provides that the overtime pay requirement does not
10 apply to:

11 any employee employed in a bona fide executive, administrative, or professional
12 capacity (including any employee employed in the capacity of academic
13 administrative personnel or teacher in elementary or secondary schools), or in the
14 capacity of outside salesman (as such terms are defined and delimited from time to
15 time by regulations of the Secretary, subject to the provisions of the Administrative
16 Procedure Act [5 USCS §§ 551 et seq.] except [that] an employee of a retail or
17 service establishment shall not be excluded from the definition of employee
18 employed in a bona fide executive or administrative capacity because of the number
19 of hours in his workweek which he devotes to activities not directly or closely related
20 to the performance of executive or administrative activities, if less than 40 per
21 centum of his hours worked in the workweek are devoted to such activities).

22 52. DEFENDANTS have willfully engaged in a widespread pattern and practice of
23 violating the provisions of the FLSA, as detailed above, by uniformly designating certain employees
24 as “exempt” employees, by their job title and without regard to DEFENDANTS’ realistic
25 expectations and actual overall requirements of the job, including PLAINTIFFS and the other
26 members of the COLLECTIVE CLASS who worked on the production side of the DEFENDANTS’
27 business enterprise, including the teams of Product Specialist, Business Application Coordinator,
28 and Site Support Specialist Staff Members. This was done in an illegal attempt to avoid payment of

1 overtime wages and other benefits in violation of the FLSA and Code of Federal Regulations
2 requirements.

3 53. Pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, PLAINTIFFS and
4 the members of the COLLECTIVE CLASS are entitled to compensation for all hours actually
5 worked, including time spent training DEFENDANTS' employees during meal periods, and are also
6 entitled to wages at a rate not less than one and one-half times their regular rate of pay for all hours
7 worked in excess of forty (40) hours in any workweek.

8 54. 29 C.F.R. 541.2 establishes that a job title alone is insufficient to establish the
9 exempt status of an employee. The exempt or nonexempt status of any particular employee must be
10 determined on the basis of whether the employee's salary and duties meet the requirements of the
11 regulations in this part.

12 55. The exemptions of the FLSA as listed in section 13(a), and as explained
13 by 29 C.F.R. 541.3, do not apply to PLAINTIFFS and the other members of the COLLECTIVE
14 CLASS, because their work consists of non-management, production line labor performed with
15 skills and knowledge acquired from on-the-job training, rather than from the prolonged course of
16 specialized intellectual instruction required for exempt learned professional employees such as
17 medical doctors, architects and archeologists. PLAINTIFFS do not hold a computer related
18 bachelor's degree, have not taken any prolonged course of specialization relating to network
19 systems or infrastructure, and have attained the vast majority of the skills used as an employee of
20 DEFENDANTS from on the job training.

21 56. For an employee to be exempt as a bona fide "executive," all the following criteria
22 must be met and DEFENDANTS have the burden of proving that:

- 23 (a) The employee's primary duty must be management of the enterprise, or of a
24 customarily recognized department or subdivision;
- 25 (b) The employee must customarily and regularly direct the work of at least two (2) or
26 more other employees;
- 27 (c) The employee must have the authority to hire and fire, or to command particularly
28 serious attention to his or his recommendations on such actions affecting other

1 employees; and,
2 (d) The employee must be primarily engaged in duties which meet the test of exemption.
3 No member of the COLLECTIVE CLASS was or is an executive because they all fail to meet the
4 requirements of being an “executive” under section 13 of the FLSA and 29 C.F.R. 541.100.
5 Moreover, none of the members of the COLLECTIVE CLASS were senior or lead computer
6 programmers who managed the work of two or more other programmers in a customarily
7 recognized department or subdivision of the employer, and whose recommendations as to the hiring,
8 firing, advancement, promotion or other change of status of the other programmers were given
9 particular weight and therefore, they do not qualify for the executive exemption as a computer
10 employees under 29 C.F.R. 541.402.

11 57. For an employee to be exempt as a bona fide “administrator,” all of the
12 following criteria must be met and DEFENDANTS have the burden of proving that:

- 13 (a) The employee must perform office or non-manual work directly related to
14 management or general business operation of the employer or the employer’s
15 customers;
- 16 (b) The employee must customarily and regularly exercise discretion and independent
17 judgment with respect to matters of significance; and,
- 18 (c) The employee must regularly and directly assist a proprietor or an exempt
19 administrator; or,
- 20 (d) The employee must perform under only general supervision, work requiring special
21 training, experience, or knowledge; and,
- 22 (e) The employee must be primarily engaged in duties which meet the test of exemption.

23 No member of the COLLECTIVE CLASS was or is an administrator because they all fail to meet
24 the requirements of for being an “administrator” under section 13(a) of the FLSA and 29 C.F.R.
25 541.300. Moreover, their primary duty does not include work such as planning, scheduling, and
26 coordinating activities required to develop systems to solve complex business, scientific or
27 engineering problems of the employer or the employer's customers and therefore, they are not
28 qualified for the administrative exemption as computer employees under 29 C.F.R. 541.402.

1 58. For an employee to be “exempt” as a bona fide “professional”, the
2 DEFENDANTS have the burden of proving that the primary duty of the employee is the
3 performance of work that:

- 4 (a) Requires knowledge of an advanced type in a field of science or learning customarily
5 acquired by a prolonged course of specialized intellectual instruction; or
- 6 (b) Requires invention, imagination, originality or talent in a recognized field of artistic
7 or creative endeavor.

8 No member of the COLLECTIVE CLASS was or is a professional because they all fail to meet the
9 requirements of being an “professional” within the meaning of 29 CFR 541.300.

10 59. For an employee to be “exempt” as a computer software employee,
11 DEFENDANTS have the burden of showing that the primary duty of the employee consists of:

- 12 (a) The application of systems analysis techniques and procedures, including consulting
13 with users, to determine hardware, software or system functional specifications;
- 14 (b) The design, development, documentation, analysis, creation, testing or modification
15 of computer systems or programs, including prototypes, based on and related to user
16 or system design specifications;
- 17 (c) The design, documentation, testing, creation or modification of computer programs
18 related to machine operating systems; or
- 19 (d) A combination of the aforementioned duties, the performance of which requires the
20 same level of skills.

21 The “primary duty” of the PLAINTIFFS, and the other members of the COLLECTIVE CLASS, as
22 defined in 29 C.F.R. 541.700, did not consist of the job functions outlined above. Rather, the
23 primary duty of the PLAINTIFFS, and the other members of the COLLECTIVE CLASS, consisted
24 of providing technical support to DEFENDANTS’ clinicians and staff in connection with the KP
25 HealthConnect computer software. Although the primary duty was highly dependent on and
26 facilitated by the use of computers and computer software programs, the primary duty did not
27 involve:

- 28 (1) the determination of hardware, software, or system functional specifications;

- 1 (2) the design, development, documentation, analysis, creation, testing, or modification
- 2 of computer systems or programs; or
- 3 (3) a combination of these duties, the performance of which requiring the same level of
- 4 skills.

5 Rather than write any software programming code, PLAINTIFFS and the other members of the
6 CLASS simply provided end-user support for the use of the KP HealthConnect system which
7 included, but was not limited to responding to and monitoring service requests, diagnosing,
8 troubleshooting and resolving of technical problems and information technology issues related to
9 desktop hardware, application or system software, and/or network infrastructure, in accordance with
10 established policies and procedures. Further, PLAINTIFFS and the members of the COLLECTIVE
11 CLASS operated under a substantial amount of scrutiny from management in providing the
12 technical support and in performing the other non-exempt functions that constituted their primary
13 duties. Thus, no member of the COLLECTIVE CLASS was or is exempt as a computer systems
14 analyst, computer programmer, or software engineer because they all fail to meet the requirements
15 of being a “professional” within the meaning of 29 U.S.C. § 213 and 29 C.F.R. 541.400.

16 60. During the COLLECTIVE CLASS PERIOD, the PLAINTIFFS, and other
17 members of the COLLECTIVE CLASS, worked more than forty (40) hours in a work week and
18 were also required to perform duties that were primarily for the benefit of the employer during meal
19 periods.

20 61. At all relevant times, DEFENDANTS failed to pay PLAINTIFFS, and
21 other members of the COLLECTIVE CLASS, overtime compensation for the hours they have
22 worked in excess of the maximum hours permissible by law as required by section 207 of the FLSA,
23 even though PLAINTIFFS, and the other members of the COLLECTIVE CLASS, were regularly
24 required to work, and did in fact work, overtime hours.

25 62. At all relevant times, DEFENDANTS failed to pay PLAINTIFFS, and
26 other members of the COLLECTIVE CLASS, regular compensation for the hours they have
27 worked, performing duties primarily for the benefit of the employer during meal periods.

28 63. For purposes of the Fair Labor Standards Act, the employment practices

1 of DEFENDANTS were and are uniform throughout California in all respects material to the claims
2 asserted in this Complaint.

3 64. There are no other exemptions applicable to PLAINTIFFS and/or to
4 members of the COLLECTIVE CLASS.

5 65. As a result of DEFENDANTS' failure to pay overtime and failure to pay
6 regular compensation for hours worked during meal periods, as required by the FLSA, PLAINTIFFS
7 and the members of the COLLECTIVE CLASS were damaged in an amount to be proved at trial.

8 66. Therefore, PLAINTIFFS demand that they and the members of the
9 COLLECTIVE CLASS be paid overtime compensation as required by the FLSA for every hour of
10 overtime worked in any work week for which they were not compensated, regular compensation for
11 every hour worked primarily for the benefit of DEFENDANTS for which they were not
12 compensated, plus interest and attorneys' fees as provided by law.

13
14 **SECOND CAUSE OF ACTION**

15 **For Failure To Pay Overtime Compensation**

16 **[Cal. Lab. Code §§ 510, 515.5, 551, 552, 1194 and 1198]**

17 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against all DEFENDANTS)**

18 67. PLAINTIFFS, and the other members of the CALIFORNIA CLASS,
19 reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 65
20 of this Complaint.

21 68. Cal. Lab. Code § 510 states in relevant part:
22 Eight hours of labor constitutes a day's work. Any work in excess of eight hours in
23 one workday and any work in excess of 40 hours in any one workweek and the first
24 eight hours worked on the seventh day of work in any one workweek shall be
25 compensated at the rate of no less than one and one-half times the regular rate of pay
26 for an employee. Any work in excess of 12 hours in one day shall be compensated at
27 the rate of no less than twice the regular rate of pay for an employee. In addition, any
28

1 work in excess of eight hours on any seventh day of a workweek shall be
2 compensated at the rate of no less than twice the regular rate of pay of an employee.

3 69. Cal. Lab. Code § 551 states that, “Every person employed in any occupation of labor
4 is entitled to one day’s rest therefrom in seven.”

5 70. Cal. Lab. Code § 552 states that, “No employer of labor shall cause his employees to
6 work more than six days in seven.”

7 71. Cal. Lab. Code § 515(d) provides: “For the purpose of computing the overtime rate
8 of compensation required to be paid to a nonexempt full-time salaried employee, the
9 employee's regular hourly rate shall be 1/40th of the employee's weekly salary.

10 72. Cal. Lab. Code § 1194 states:
11 Notwithstanding any agreement to work for a lesser wage, any employee receiving
12 less than the legal minimum wage or the legal overtime compensation applicable to
13 the employee is entitled to recover in a civil action the unpaid balance of the full
14 amount of this minimum wage or overtime compensation, including interest thereon,
15 reasonable attorney's fees, and costs of suit.

16 73. Cal. Lab. Code § 1198 provides: “The maximum hours of work and the standard
17 conditions of labor fixed by the commission shall be the maximum hours of work
18 and the standard conditions of labor for employees. The employment of any
19 employee for longer hours than those fixed by the order or under conditions of labor
20 prohibited by the order is unlawful.”

21 74. DEFENDANTS have intentionally and uniformly designated certain
22 employees as “exempt” employees, by their job title and without regard to DEFENDANTS’ realistic
23 expectations and actual overall requirements of the job, including PLAINTIFFS and the other
24 members of the CALIFORNIA CLASS who worked on the production side of the DEFENDANTS’
25 business enterprise. This was done in an illegal attempt to avoid payment of overtime wages and
26 other benefits in violation of the Cal. Lab. Code and Industrial Welfare Commission requirements.

27 75. For an employee to be exempt as a bona fide “executive,” all the
28 following criteria must be met and DEFENDANTS have the burden of proving that:

- 1 (a) The employee’s primary duty must be management of the enterprise, or of a
- 2 customarily recognized department or subdivision; and,
- 3 (b) The employee must customarily and regularly direct the work of at least two (2) or
- 4 more other employees; and,
- 5 (c) The employee must have the authority to hire and fire, or to command particularly
- 6 serious attention to his or his recommendations on such actions affecting other
- 7 employees; and,
- 8 (d) The employee must customarily and regularly exercise discretion and independent
- 9 judgment; and,
- 10 (e) The employee must be primarily engaged in duties which meet the test of exemption.

11 No member of the CALIFORNIA CLASS was or is an executive because they all fail to meet the
12 requirements of being an “executive” within the meaning of Order No. 4-2001.

13 76. For an employee to be exempt as a bona fide “administrator,” all of the
14 following criteria must be met and DEFENDANTS have the burden of proving that:

- 15 (a) The employee must perform office or non-manual work directly related to
- 16 management policies or general business operation of the employer; and,
- 17 (b) The employee must customarily and regularly exercise discretion and independent
- 18 judgment; and,
- 19 (c) The employee must regularly and directly assist a proprietor or an exempt
- 20 administrator; or,
- 21 (d) The employee must perform, under only general supervision, work requiring special
- 22 training, experience, or knowledge, or,
- 23 (e) The employee must execute special assignments and tasks under only general
- 24 supervision; and,
- 25 (f) The employee must be primarily engaged in duties which meet the test of exemption.

26 No member of the CALIFORNIA CLASS was or is an administrator because they all fail to meet
27 the requirements for being an “administrator” under Order No. 4-2001.

28 77. The Industrial Welfare Commission, ICW Wage Order 4-2001, at

1 section (1)(A)(3)(h), at Labor Code § 515, and Cal. Lab. § 515.5 also set forth the requirements
2 which must be complied with to place an employee in the “professional” exempt category. For an
3 employee to be “exempt” as a bona fide “professional”, all the following criteria must be met and
4 DEFENDANTS have the burden of proving that:

- 5 (a) The employee is primarily engaged in an occupation commonly recognized as a
6 learned or artistic profession. For the purposes of this subsection, “learned or artistic
7 profession” means an employee who is primarily engaged in the performance of:
- 8 1) Work requiring knowledge of an advanced type in a field or science or
9 learning customarily acquired by a prolonged course of specialized
10 intellectual instruction and study, as distinguished from a general academic
11 education and from an apprenticeship, and from training in the performance
12 of routine mental, manual, or physical processes, or work that is an essential
13 part or necessarily incident to any of the above work; or,
 - 14 2) Work that is original and creative in character in a recognized field of artistic
15 endeavor, and the result of which depends primarily on the invention,
16 imagination or talent of the employee or work that is an essential part of or
17 incident to any of the above work; and,
 - 18 3) Whose work is predominately intellectual and varied in character (as opposed
19 to routine mental, manual, mechanical, or physical work) and is of such
20 character cannot be standardized in relation to a given period of time.
- 21 (b) The employee must customarily and regularly exercise discretion and independent
22 judgment; and.
- 23 (c) The employee earns a monthly salary equivalent to no less than two (2) times the
24 state minimum wage for full-time employment. No member of the CALIFORNIA
25 CLASS was or is a professional because they all fail to meet the requirements of
26 being a “professional” within the meaning of Order No. 4-2001.

27 In particular, for an employee to be “exempt” as a bona fide “professional” with respect to the
28 requirements for a computer software employee, all the following criteria must be met and

1 DEFENDANTS have the burden of proving that:

- 2 (a) The employee must primarily perform work which is intellectual or creative and that
3 requires the exercise of discretion and independent judgment; and,
- 4 (b) The employee is primarily engaged in duties which consist of one or more of the
5 following:
- 6 1) the application of systems analysis techniques and procedures, including
7 consulting with users, to determine hardware, software, or system functional
8 specifications;
- 9 2) the design, development, documentation, analysis, creation, testing or
10 modification of computer systems or programs, including prototypes, based
11 on and related to user or system design specifications;
- 12 3) the documentation, testing, creation or modification of computer programs
13 related to the design of the software or hardware for computer operating
14 systems; and,
- 15 (c) The employee must be highly skilled and proficient in the theoretical and practical
16 application of highly specialized information to computer systems analysis,
17 programming and software engineering. A job title shall not be determinative of the
18 applicability of this exemption; and,
- 19 (d) The employee's hourly rate of pay is not less than forty-one dollars (\$ 41.00), or the
20 annualized full-time salary equivalent of that rate, provided that all other
21 requirements of this section are met and that in each workweek the employee
22 receives not less than forty-one dollars (\$ 41.00) per hour worked. This is the rate
23 which is adjusted by the DLSE on October 1 of each year to be effective on January 1
24 of the following year by an amount equal to the percentage increase in the California
25 Consumer Price Index for Urban Wage Earners and Clerical Workers.
- 26 1) The adjusted rates for each year of the CALIFORNIA CLASS PERIOD are as
27 follows: In 2003, the rate was \$43.58. In 2004, the rate was \$44.63. In 2005,
28 the rate was \$45.84. In 2006, the rate was \$47.81. Currently, in 2007, the

1 rate is \$49.77. No member of the CALIFORNIA CLASS was or is an
2 exempt “Computer Software Employee” because they all fail to meet the
3 requirements of Order No. 4-2001.

4 PLAINTIFFS and all members of the CALIFORNIA CLASS were paid less than these amounts
5 during the Class Period.

6 78. PLAINTIFFS, and other members of the CALIFORNIA CLASS, do not
7 fit the definition of an exempt executive, administrative, or professional employee because:

- 8 (a) They did not work as executives or administrators; and,
- 9 (b) The professional exemption articulated in Wage Order 4-2001, section (1)(A)(3)(h)
10 and Labor Code § 515, and the professional exemption articulated in Cal. Lab. Code
11 § 515.5, does not apply to PLAINTIFFS, nor to the other members of the
12 CALIFORNIA CLASS, because they are either computer software employees paid
13 less than the requisite amount set forth in Cal. Lab. § 515.5(a)(4) and under
14 subdivision (1)(A)(3)(h)(iv) of Order No. 4-2001, and/or did not otherwise meet all
15 the applicable requirements to work under the exemption of computer software
16 employee for the reasons set forth above in this Complaint.

17 Rather than write any software programming code, PLAINTIFFS and the other members of the
18 CLASS simply provided end-user support for the use of the KP HealthConnect system which
19 included, but was not limited to responding to and monitoring service requests, diagnosing,
20 troubleshooting and resolving of technical problems and information technology issues related to
21 desktop hardware, application or system software, network infrastructure, in accordance with
22 established policies and procedures. Further, PLAINTIFFS and the other members of the
23 CALIFORNIA CLASS operated under a substantial amount of scrutiny from management in
24 providing the technical support and in performing the other non-exempt functions that constituted
25 their primary duties. As a result, the primary job duties performed by the PLAINTIFFS and the
26 other Product Specialist, Business Application Coordinator, and Site Support Specialist Staff
27 Members would not qualify these employees for either the executive, administrative, or computer
28 professional exemption.

1 79. During the class period, the PLAINTIFFS, and other members of the
2 CALIFORNIA CLASS, worked more than eight (8) hours per day, (40) forty hours per week, and/or
3 hours worked on the seventh (7th) consecutive day of a workweek.

4 80. At all relevant times, DEFENDANTS failed to pay PLAINTIFFS, and
5 other members of the CALIFORNIA CLASS, overtime compensation for the hours they have
6 worked in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510
7 and 1198, even though PLAINTIFFS, and the other members of the CALIFORNIA CLASS, were
8 regularly required to work, and did in fact work, overtime hours.

9 81. By virtue of DEFENDANTS' unlawful failure to pay additional compensation to the
10 PLAINTIFFS, and the other members of the CALIFORNIA CLASS, for their regular and overtime
11 hours, the PLAINTIFFS, and the other members of the CALIFORNIA CLASS, have suffered, and
12 will continue to suffer, an economic injury in amounts which are presently unknown to them and
13 which will be ascertained according to proof at trial.

14 82. DEFENDANTS knew or should have known that PLAINTIFFS, and the
15 other members of the CALIFORNIA CLASS, were misclassified as exempt and DEFENDANTS
16 systematically elected, either through intentional malfeasance or gross nonfeasance, not to pay them
17 for their overtime labor as a matter of uniform corporate policy, practice and procedure.

18 83. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, therefore,
19 request recovery of regular and overtime compensation according to proof, interest, attorney's fees
20 and cost pursuant to Cal. Lab. Code § 218.5 and § 1194(a), as well as the assessment of any
21 statutory penalties against DEFENDANTS, in a sum as provided by the Cal. Lab. Code and/or other
22 statutes. Further, PLAINTIFFS, and the other members of the CALIFORNIA CLASS, are entitled
23 to seek and recover reasonable attorneys' fees and costs pursuant to Cal. Lab. Code §§ 218.5 and
24 1194.

25 84. In performing the acts and practices herein alleged in violation of labor
26 laws and refusing to provide the requisite regular and overtime compensation, the DEFENDANTS
27 acted and continue to act intentionally, oppressively, and maliciously toward the PLAINTIFFS, and
28 toward the other members of the CALIFORNIA CLASS, with a conscious and utter disregard of

1 their legal rights, or the consequences to them, and with the despicable intent of depriving them of
2 their property and legal rights and otherwise causing them injury in order to increase corporate
3 profits at the expense of PLAINTIFFS and the members of the Class.

4
5 **THIRD CAUSE OF ACTION**

6 **For Failure to Pay Wages When Due**

7 **[Cal. Lab. Code § 203]**

8 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All DEFENDANTS)**

9 85. PLAINTIFFS, and the other members of the CALIFORNIA CLASS,
10 reallege and incorporate by reference, as though fully set forth herein, paragraphs 1 through 83 of
11 this Complaint.

12 86. Cal. Lab. Code § 200 provides that:

13 As used in this article:

14 (a) "Wages" includes all amounts for labor performed by employees of every
15 description, whether the amount is fixed or ascertained by the standard of time, task,
16 piece, commission basis, or other method of calculation.

17 (b) "Labor" includes labor, work, or service whether rendered or performed under
18 contract, subcontract, partnership, station plan, or other agreement if the labor to be
19 paid for is performed personally by the person demanding payment.

20 87. Cal. Lab. Code § 202 provides, in relevant part, that:

21 If an employee not having a written contract for a definite period quits his or her
22 employment, his or her wages shall become due and payable not later than 72 hours
23 thereafter, unless the employee has given 72 hours previous notice of his or her
24 intention to quit, in which case the employee is entitled to his or her wages at the
25 time of quitting. Notwithstanding any other provision of law, an employee who quits
26 without providing a 72-hour notice shall be entitled to receive payment by mail if he
27 or she so requests and designates a mailing address. The date of the mailing shall
28 constitute the date of payment for purposes of the requirement to provide payment

1 within 72 hours of the notice of quitting.

2 88. Cal. Lab. Code § 203 provides:

3 If an employer willfully fails to pay, without abatement or reduction, in accordance
4 with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is
5 discharged or who quits, the wages of the employee shall continue as a penalty from
6 the due date thereof at the same rate until paid or until an action therefor is
7 commenced; but the wages shall not continue for more than 30 days.

8 89. Many of the California Class members have terminated their employment and
9 DEFENDANTS have not tendered restitution of wages owed.

10 90. Therefore, as provided by Cal lab. Code § 203, on behalf of themselves and
11 the members of the CALIFORNIA CLASS, PLAINTIFFS demand thirty days of pay as penalty for
12 not paying all wages due at time of termination for all employees who terminated employment
13 during the CALIFORNIA CLASS PERIOD and demand an accounting and payment of all wages
14 due, plus interest, as provided by Cal lab. Code § 218.6 plus attorneys fees and interest as allowed
15 by law.

16
17 **FOURTH CAUSE OF ACTION**

18 **For Failure to Provide Meal and Rest Periods**

19 **[Cal. Lab. Code §§ 226.7 and 512]**

20 **(By PLAINTIFFS and the CALIFORNIA CLASS and against All DEFENDANTS)**

21 91. PLAINTIFFS, and the other members of the CALIFORNIA CLASS,
22 reallege and incorporate by reference, as though fully set forth herein, paragraphs 1 through 90 of
23 this Complaint.

24 92. Cal. Lab. Code § 512 provide, in relevant part: “An employer may not employ an
25 employee for a work period of more than five hours per day without providing the
26 employee with a meal period of not less than 30 minutes, except that if the total work
27 period per day of the employee is no more than six hours, the meal period may be
28 waived by mutual consent of both the employer and employee. An employer may not

1 employ an employee for a work period of more than 10 hours per day without
2 providing the employee with a second meal period of not less than 30 minutes,
3 except that if the total hours worked is no more than 12 hours, the second meal
4 period may be waived by mutual consent of the employer and the employee only if
5 the first meal period was not waived.

6 93. Section 11 of the Order 4-2001 of the Industrial Wage Commission
7 provides, in relevant part:

8 Meal Periods:

9 (A) No employer shall employ any person for a work period of more than five (5)
10 hours without a meal period of not less than 30 minutes, except that when a
11 work period of not more than six (6) hours will complete the day's work the
12 meal period may be waived by mutual consent of the employer and the
13 employee. Unless the employee is relieved of all duty during a 30 minute
14 meal period, the meal period shall be considered an "on duty" meal period
15 and counted as time worked. An "on duty" meal period shall be permitted
16 only when the nature of the work prevents an employee from being relieved
17 of all duty and when by written agreement between the parties an on-the-job
18 paid meal period is agreed to. The written agreement shall state that the
19 employee may, in writing, revoke the agreement at any time.

20 (B) If an employer fails to provide an employee a meal period in accordance with
21 the applicable provisions of this order, the employer shall pay the employee
22 one (1) hour of pay at the employee's regular rate of compensation for each
23 workday that the meal period is not provided.

24 94. Section 12 of the Order 4-2001 of the Industrial Wage Commission
25 provides, in relevant part:

26 Rest Periods:

27 (A) Every employer shall authorize and permit employees to take rest periods,
28 which insofar as practicable shall be in the middle of each work period. The

1 authorized rest period time shall be based on the total hours worked daily at
2 the rate of ten (10) minutes net rest time per four (4) hours or major fraction
3 thereof. However, a rest period need not be authorized for employees whose
4 total daily work time is less than three and one-half (3-1/2) hours. Authorized
5 rest period time shall be counted as hours worked for which there shall be no
6 deduction from wages.

7 (B) If an employer fails to provide an employee a rest period in accordance with
8 the applicable provisions of this order, the employer shall pay the employee
9 one (1) hour of pay at the employee's regular rate of compensation for each
10 workday that the rest period is not provided.

11 95. Cal. Lab. Code § 226.7 provides:

12 (a) No employer shall require any employee to work during any meal or rest period
13 mandated by an applicable order of the Industrial Welfare Commission.

14 (b) If an employer fails to provide an employee a meal period or rest period in
15 accordance with an applicable order of the Industrial Welfare Commission, the
16 employer shall pay the employee one additional hour of pay at the employee's regular
17 rate of compensation for each work day that the meal or rest period is not provided.

18 96. DEFENDANTS have intentionally and improperly failed to provide all
19 rest and/or meal periods without any work or duties to PLAINTIFFS and the other members of the
20 CALIFORNIA CLASS who worked more than three and one half hours (3 ½) per day, and by
21 failing to do so DEFENDANTS violated the provisions of Labor Code 226.7.

22 97. Therefore, PLAINTIFFS demand on behalf of themselves and the members
23 of the CALIFORNIA CLASS, one (1) hour of pay for each workday in which a rest period was not
24 provided for each four (4) hours of work during the period commencing on the date that is within
25 four years prior to the filing of this Complaint and one (1) hour of pay for each five (5) hours of
26 work in which a meal period was not provided.

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28

FIFTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

(By PLAINTIFFS and the CALIFORNIA CLASS and against All DEFENDANTS)

98. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 97 of this Complaint.

99. Cal. Labor Code § 226 provides that an employer must furnish employees with an “accurate itemized statement in writing showing:

- (1) gross wages earned,
- (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- (5) net wages earned,
- (6) the inclusive dates of the period for which the employee is paid,
- (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- (8) the name and address of the legal entity that is the employer, and
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.”

100. At all times relevant herein, DEFENDANTS violated Labor Code § 226, in that DEFENDANTS failed to properly and accurately itemize the number of hours worked by

1 PLAINTIFFS, and the other members of the CALIFORNIA CLASS at the effective regular rates of
2 pay and the effective overtime rates of pay.

3 101. DEFENDANTS knowingly and intentionally failed to comply with
4 Labor Code § 226, causing damages to PLAINTIFFS, and the other members of the CALIFORNIA
5 CLASS. These damages include, but are not limited to, costs expended calculating the true hours
6 worked and the amount of employment taxes which were not properly paid to state and federal tax
7 authorities. These damages are difficult to estimate. PLAINTIFFS, and the other members of the
8 CLASS, therefore, elect to recover liquidated damages of \$50.00 for the initial pay period in which
9 the violation occurred, and \$100.00 for each violation in subsequent pay period pursuant to Labor
10 Code § 226, in an amount according to proof at the time of trial (but in no event more than
11 \$4,000.00 for PLAINTIFFS and each respective member of the CALIFORNIA CLASS herein) plus
12 reasonable attorney's fees and costs pursuant to Labor Code § 226(g).

13
14 **SIXTH CAUSE OF ACTION**

15 **For Unlawful Business Practices**

16 **[Cal. Bus. And Prof. Code § 17200 et seq.]**

17 **(By PLAINTIFFS and the CALIFORNIA CLASS and against All DEFENDANTS)**

18 102. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
19 incorporate by this reference, as though fully set forth herein, paragraphs 1 through 101 of this
20 Complaint.

21 103. DEFENDANTS are "persons" as that term is defined under Cal. Bus. and Prof.
22 Code § 17021.

23 104. Cal. Bus. And Prof. Code § 17200 defines unfair competition as any
24 unlawful, unfair, or fraudulent business act or practice.

25 105. By the conduct alleged hereinabove in the Second through Fifth Claims
26 for Relief, DEFENDANTS have violated the provisions of the Unfair Competition Law, Cal. Bus.
27 & Prof. Code §§ 17200, et seq., for which this Court should issue equitable and injunctive relief,
28 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld or

1 labor taken without proper compensation.

2 106. By and through the unfair and unlawful business practices described
3 hereinabove, DEFENDANTS have obtained valuable property, money, and services from the
4 PLAINTIFFS, and the other members of the CLASS, and has deprived them of valuable rights and
5 benefits guaranteed by law, all to their detriment and to the benefit of DEFENDANTS so as to allow
6 DEFENDANTS to unfairly compete.

7 107. All the acts described herein as violations of, among other things, the
8 Cal. Lab. Code and Industrial Welfare Commission Wage Orders, are unlawful and in violation of
9 public policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and Thereby
10 constitute unfair and unlawful business practices in violation of Cal. Bus. And Prof. Code § 17200
11 et seq.

12 108. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, are
13 further entitled to, and do, seek a declaration that the above described business practices are unfair
14 and unlawful and that an injunctive relief should be issued restraining DEFENDANTS from
15 engaging in any of these unfair and unlawful business practices in the future.

16 109. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, have
17 no plan, speedy, and/or adequate remedy at law that will end the unfair and unlawful business
18 practices of DEFENDANTS. As a result of the unfair and unlawful business practices described
19 above, PLAINTIFFS, and the other members of the CALIFORNIA CLASS, have suffered and will
20 continue to suffer irreparable harm unless DEFENDANTS are restrained from continuing to engage
21 in these unfair and unlawful business practices. In addition, DEFENDANTS should be required to
22 disgorge the unpaid moneys to PLAINTIFFS, and the other members of the CALIFORNIA CLASS.

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24

SEVENTH CAUSE OF ACTION

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Labor Code Private Attorneys General Act

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[Cal. Labor Code § 2698]

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(By PLAINTIFFS and the CALIFORNIA CLASS and against All DEFENDANTS)

28

110. PLAINTIFFS, and the other members of the CLASS, reallege and incorporate by this

1 reference, as though fully set forth herein, paragraphs 1 through 109 of this Complaint.

2 111. On May 7, 2008, PLAINTIFFS gave written notice by certified mail to the Labor
3 and Workforce Development Agency and the employer of the specific provisions of this code
4 alleged to have been violated as required by Labor Code § 2699.3. More than thirty-three (33) days
5 have elapsed since PLAINTIFFS gave notice to the Labor and Workforce Development Agency
6 (“LWDA”). As a result, pursuant to Section 2699.3, Plaintiff may now commence a civil action
7 pursuant to Section 2699.

8 112. The policies, acts and practices heretofore described were and are an unlawful
9 business act or practice because DEFENDANTS’ failure to pay wages, failure to provide rest and
10 meal period breaks, failure to pay wages and compensation for work without rest and meal period
11 breaks and failure to provide accurate wage statements and maintain accurate time records for
12 PLAINTIFFS and the other members of the CLASS violates applicable Labor Code sections and
13 gives rise to statutory penalties as a result of such conduct, including but not limited to penalties as
14 provided by Labor Code §§ 221, 226, 226.7, 558, 1174 and 1194, applicable Industrial Welfare
15 Commission Wage Orders. PLAINTIFFS , as aggrieved employees, hereby seek recovery of civil
16 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 on behalf of
17 themselves and other current and former employees of DEFENDANTS, against whom one or more
18 of the violations of the Labor Code was committed.

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PRAYER

WHEREFOR, PLAINTIFFS pray for judgment against each Defendant, jointly and severally, as follows:

- A) Compensatory damages, according to proof at trial due PLAINTIFFS and the other members of the COLLECTIVE CLASS and CALIFORNIA CLASS, during the applicable COLLECTIVE CLASS PERIOD and CALIFORNIA CLASS PERIOD plus interest thereon at the statutory rate;
- B) Restitution, according to proof at trial, due PLAINTIFFS and the other members of the CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS PERIOD plus interest thereon at the statutory rate;
- C) One (1) hour of pay for each workday in which a rest period was not provided to PLAINTIFFS and each member of the CALIFORNIA CLASS for each four (4) hours of work during the period commencing on the date that is within four years prior to the filing of this Complaint;
- D) One hour of pay for each five (5) hours of work in which a meal period was not provided to PLAINTIFFS and each member of the CALIFORNIA CLASS;
- E) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
- F) An order requiring DEFENDANTS to provide an accounting of all wages and all sums unlawfully withheld from compensation due to PLAINTIFFS and the other members of the COLLECTIVE and CALIFORNIA CLASSES;
- G) Imposition of a constructive trust upon the assets of the DEFENDANTS to the extent of the sums due to PLAINTIFFS and to the other members of the COLLECTIVE and CALIFORNIA CLASSES;
- H) An award of interest, including prejudgment interest at the legal rate;
- I) An award of statutory damages, including reasonable attorneys' fees and cost of suit, but only to the extent that such reasonable attorneys' fees and costs are recoverable pursuant to Cal. Lab. Code §1194. Neither this prayer nor any other allegation or

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prayer in this Complaint is to be construed as a request, under any circumstance, that would result in a request for attorneys' fees or costs available under Cal. Lab. Code § 218.5;

J) For all appropriate relief pursuant to Cal. Lab. Code § 2699.3, including any applicable interest thereon; and,

K) An award of penalties as available under the law; and,

L) Such other and further relief as the Court deems just and proper.

Dated: June 17, 2008

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DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial on issues triable to a jury.

Dated: June 17, 2008

BLUMENTHAL & NORDREHAUG

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